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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,518	04/03/2006	Shinichi Kaga	PROS:004	6950
37013	7590	05/29/2008	EXAMINER	
ROSSI, KIMMS & McDOWELL LLP. P.O. BOX 826 ASHBURN, VA 20146-0826			TAPOLCAI, WILLIAM E	
			ART UNIT	PAPER NUMBER
			3744	
			MAIL DATE	DELIVERY MODE
			05/29/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/574,518	KAGA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William E. Tapolcai	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 April 2008.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 and 14-29 is/are pending in the application.  
 4a) Of the above claim(s) 3,4,12,14-20 and 22-29 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,5-11 and 21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060524</u> .  | 6) <input type="checkbox"/> Other: _____ .                        |

1. Applicant's election with traverse of the election of species in the reply filed on April 9, 2008 is acknowledged. The traversal is on the ground(s) that the election of species requirement cannot be made under PCT rules. This is not found persuasive because the paragraphs used to denote a lack of unity of invention in the Office action of March 13, 2008 are form paragraphs that are provided under current PCT rules. If Applicant is correct in stating that the U.S. practice of election of species requirements do not apply to PCT cases, these form paragraphs would not be available for examiners to use.

2. Furthermore, it is well understood that if a generic claim is found to be allowable, Applicant would be given all of the species claims that would depend from that allowable generic claim.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 3, 4, 12, 14-20, and 22-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 9, 2008.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 2, 5, 6, 11, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,769,809 to Robinson et al in view of U.S. Patent

No. 6,109,048 to Kim. Robinson et al discloses an auger-type icemaker with a compressor whose motor is controlled by an outlet temperature sensor 51a for sensing the refrigerant temperature at the outlet of the evaporator. However, Robinson et al does not disclose that the rotational speed of the compressor motor is controlled in response to the sensed temperature. Kim teaches a control for a compressor motor of a refrigeration system in which the rotational speed of the compressor motor is controlled in response to the sensed evaporator temperature. Thus, it would be obvious to modify Robinson et al so that the rotational speed of the compressor motor is controlled in response to the sensed evaporator outlet temperature, in view of Kim, to yield the predictable result of more accurate control of the refrigeration system. The recitation of the motor controlling means performing feedback control to result in the degree of superheat of the refrigerant in the evaporator being kept constant is considered to be a mere functional statement of a desired result and not a positive structural limitation.

6. Claims 1, 2, 5-11, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recited in the last paragraph that the rotational speed of the motor is controlled. However, it is not specified as to which motor is controlled. Claim 1 should be amended at this point to recite that the compressor motor is controlled, as there are two motors which are recited in the claim.

7. Claims 7-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Tapolcai whose telephone number is (571) 272-4814. The examiner can normally be reached on Mon. - Thurs., 6:30 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William E. Tapolcai/  
Primary Examiner, Art Unit 3744

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May 22, 2008